

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DIAMOND-DONNELL D. BLAIR,

Plaintiff,

V.

JODY GLORE, et al.,

Defendants.

No. 4:20-CV-1591-SEP

MEMORANDUM AND ORDER

Before the Court is Plaintiff Diamond-Donnell D. Blair's Motion for Leave to File an Amended Complaint. Doc. [19]. For the reasons set forth below, the Motion is granted.

Plaintiff is an incarcerated person at Potosi Correctional Center (PCC). Doc. [1] at 1. On November 6, 2020, Plaintiff filed this action alleging that Defendants, employees of the Missouri Department of Corrections and the Department itself, violated his First Amendment right to free exercise of his religion. *Id.* at 6. Plaintiff filed this Motion for Leave to Amend his Complaint 19 days after Defendants filed their Motion to Dismiss. Doc. [14].¹

Federal Rule of Civil Procedure 15(a) states that a party may amend its pleading within 21 days after service of a motion under Rule 12(b)(6) “as a matter of course,” that is, without seeking leave of the Court. Fed. R. Civ. P. 15(a). Therefore, Plaintiff could have filed an amended complaint without seeking leave, and thus the Court will grant his Motion for Leave to File an Amendment Complaint. Doc. [19]. Plaintiff shall file his Amended Complaint on or before October 29, 2021. Plaintiff is cautioned that the filing of an amended complaint replaces the original complaint, and claims that are not realleged are deemed abandoned. *See In re Wireless Tele. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 928 (8th Cir. 2005). Additionally, Defendants’ Motion to Dismiss is denied as moot. *See Pure County, Inc. v. Sigma Chi Fraternity*, 312 F.3d 952, 956 (8th Cir. 2002). Defendants may refile their Motion to Dismiss after Plaintiff file his Amended Complaint.

¹ Defendants filed their motion to dismiss on August 27, 2021. Plaintiff filed his Motion for Leave to Amend on September 15, 2021, which is the date he placed it in the prison mailing system. *See United States v. Harrison*, 469 F.3d 1216, 1217 (8th Cir. 2006) (citing *Moore v. United States*, 173 F.3d 1131, 1135 (8th Cir. 1999); *Grady v. United States*, 269 F.3d 913, 916 (8th Cir. 2001)) (“Under the prison mailbox rule, a pro se pleading is deemed filed upon deposit in the prison mail system prior to the expiration of the filing deadline.”).

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Motion for Leave to File an Amended Complaint is **GRANTED**. Doc. [19].

IT IS FURTHER ORDERED that Plaintiff shall file his Amended Complaint on or before October 29, 2021.

IT IS FURTHER ORDERED that the Clerk shall mail to Plaintiff, along with a copy of this Order, a copy of the Court's form Prisoner Civil Rights Complaint.

IT IS FURTHER ORDERED that if Plaintiff fails to timely file an Amended Complaint, the Court will dismiss this action without prejudice.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss is **DENIED as moot**. Doc. [14]

Dated this 5th day of October, 2021.



SARAH E. PITLYK
UNITED STATES DISTRICT JUDGE